

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Rudd VanDyne
PO Box 110
Eagle, Alaska 99738

is authorized to discharge from a suction dredge (the "facility") to the receiving waters of the Birch Creek (see map in Attachment 1), in accordance with the effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective _____, 2000.

This permit and the authorization to discharge shall expire on _____, 2005.

Signed the ____ day of _____, 2000.

DRAFT

Randall F. Smith
Director
Office of Water, Region 10
U.S. Environmental Protection Agency

TABLE OF CONTENTS

Cover Page	1
I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS	3
A. Effluent Limitations	3
B. Monitoring Requirements	3
II. MANAGEMENT PRACTICES	3
III. MONITORING AND REPORTING REQUIREMENTS	4
A. Representative Sampling	4
B. Reporting of Monitoring Results	4
C. Monitoring Procedures	4
D. Additional Monitoring by the Permittee	5
E. Records Contents	5
F. Retention of Records	5
G. Notice of Noncompliance Reporting	5
H. Other Noncompliance Reporting	6
IV. COMPLIANCE RESPONSIBILITIES	6
A. Duty to Comply	6
B. Penalties for Violations of Permit Conditions	6
C. Need to Halt or Reduce Activity not a Defense	7
D. Duty to Mitigate	7
E. Proper Operation and Maintenance	7
F. Removed Substances	8
G. Bypass of Treatment Facilities	8
H. Upset Conditions	9
I. Toxic Pollutants	9
V. GENERAL REQUIREMENTS	10
A. Changes in Discharge of Toxic Substances	10
B. Planned Changes	10
C. Anticipated Noncompliance	11
D. Permit Actions	11
E. Duty to Reapply	11
F. Duty to Provide Information	11
G. Other Information	11
H. Signatory Requirements	11
I. Availability of Reports	12
J. Oil and Hazardous Substance Liability	13
K. Property Rights	13
L. Severability	13
M. State Laws	13
N. Inspection and Entry	13
O. Transfers	13
VI. DEFINITIONS	14

I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Effluent Limitations

1. At all points in the receiving stream 500 feet downstream of the dredge's discharge point, the maximum allowable increase in turbidity over the natural receiving stream turbidity while operating is 5 NTUs.
2. A visual increase in turbidity (any increase in cloudiness or muddiness) more than 500 feet downstream of the suction dredge during operations is considered a violation of this permit.
3. If noticeable turbidity does occur 500 feet downstream of the work site, operation of the suction dredge must decrease or cease so that a violation as defined above does not exist.

B. Monitoring Requirements

1. The operation shall visually monitor for turbidity as described in Permit Part I.A. once per day of operation. Individuals who conduct visual monitoring shall observe the turbidity plume, where visible, immediately downstream until they reach either the point at which the turbidity plume is no longer visible, or 500 feet, whichever point comes first. Monitors shall record daily all turbidity monitoring results. *The Permittee shall maintain records of all information resulting from any visual inspections.*
2. The Permittee will report the period of suction dredging in the Annual Report (AR). Visual violation occurrences will also be reported on the AR along with the measures taken to comply with the provisions of Permit Part I.A.3.

II. MANAGEMENT PRACTICES

- A. Dredging is permitted only within the active stream channel. Dredging within the active stream channel which results in undercutting or excavating, or which otherwise results in erosion of a stream bank, is prohibited.
- B. Dredging and discharging are prohibited within 500 feet of locations where anadromous fish are spawning or where their fish eggs or alevins are known to exist at the time dredging occurs. The Permittee shall consult the regional office of the Alaska Department of Fish & Game (ADFG) for the region in which the Permittee proposes to operate a dredge in order to obtain the information necessary to comply with this BMP. The Permittee shall report the information obtained from ADFG, and the name and title of the official contacted, to EPA concurrently with the AR for the first year of operation.

- C. Winches or other motorized equipment shall not be used to move boulders, logs, or other natural instream obstructions.
- D. No wheeled or tracked equipment may be used instream as part of the dredging operation.
- E. Suction dredges shall not operate within 800 feet of:
 - 1. another dredging operation occurring simultaneously or,
 - 2. a location where physical evidence exists that another operation has taken place.
- F. Dredging of concentrated silt and clay should be avoided. The permittee shall use reasonable care to avoid dredging silt and clay materials that would result in a significant increase in turbidity. Reasonable care includes moving the dredge to a new location or reducing the volume of effluent discharge by limiting operation speed of the suction dredge.
- G. Care shall be taken by the operator during refueling of the dredge to prevent spillage into public waters or to groundwater.

III. MONITORING AND REPORTING REQUIREMENTS

- A. **Representative Sampling.** All samples for monitoring purposes shall be representative of the monitored activity.
- B. **Reporting of Monitoring Results.** Monitoring results shall be summarized each month and reported to EPA in an Annual Report (AR). The AR shall be submitted to the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, NPDES Compliance Unit OW-133, Seattle, Washington 98101-3188, no later than November 30 each year.

If there is no mining activity during the year, the Permittee shall notify EPA of these facts no later than November 30 of each year.

The AR shall also be sent to:

Alaska Department of Environmental Conservation
610 University Avenue
Fairbanks, Alaska 99709

- C. **Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

- D. Additional Monitoring by the Permittee.** If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the AR. Such increased frequency shall also be indicated.
- E. Records Contents.** Records of monitoring information shall include:
1. The date, exact place, and time of sampling or measurements;
 2. The individual(s) who performed the sampling or measurements;
 3. The date(s) analyses were performed;
 4. The individual(s) who performed the analyses;
 5. The analytical techniques or methods used; and
 6. The results of such analyses.
- F. Retention of Records.** The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time. Data collected on-site, copies of ARs, and a copy of this NPDES permit must be maintained near the site during the duration of activity at the permitted location.
- G. Notice of Noncompliance Reporting.**
1. Any noncompliance which may endanger health or the environment shall be reported as soon as the Permittee becomes aware of the circumstance. A written submission shall also be provided in the shortest reasonable period of time after the Permittee becomes aware of the occurrence.
 2. The following occurrences of noncompliance shall also be reported in writing in the shortest reasonable period of time after the Permittee becomes aware of the circumstances:
 - a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Permit Part IV.G., Bypass of Treatment Facilities.); or
 - b. Any upset which exceeds any effluent limitation in the permit (See Permit Part IV.H., Upset Conditions.).
 - c. Any violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the Permit to be reported within 24 hours.

3. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected;
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;
4. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the NPDES Compliance Unit in Seattle, Washington, by phone, (206) 553-1846.
5. Reports shall be submitted to the addresses in Permit Part II.B., Reporting of Monitoring Results.

H. Other Noncompliance Reporting. Instances of noncompliance not required to be reported in Permit Part III.G. above shall be reported at the time that monitoring reports for Permit Part II.B. are submitted. The reports shall contain the information listed in Permit Part III.G.3.

IV. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The Permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions.

1. Civil and Administrative Penalties. Any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil or administrative penalty, not to exceed the maximum amounts authorized by Sections 309(d) and 309(g) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note).
2. Criminal Penalties:

- a. **Negligent Violations.** The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.
- b. **Knowing Violations.** The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.
- c. **Knowing Endangerment.** The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than \$1,000,000.
- d. **False Statements.** The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Permit Part IV.G., Bypass of Treatment Facilities and Permit Part IV.H., Upset Conditions, nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

- C. Need to Halt or Reduce Activity not a Defense.** It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- D. Duty to Mitigate.** The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance.** The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and

related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances. Solids, sludges, or other pollutants removed in the course of treatment or control of wastewater's shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Bypass of Treatment Facilities.

1. Bypass not exceeding limitations. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.
2. Notice:
 - a. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Permit Part III.G., Notice of Noncompliance Reporting.
3. Prohibition of bypass.
 - a. Bypass is prohibited and the Director or ADEC may take enforcement action against a Permittee for a bypass, unless:
 - (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The Permittee submitted notices as required under paragraph 2 of this section.

- b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions.

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. An administrative review of a claim that noncompliance was caused by an upset does not represent final administrative action for any specific event. A determination is not final until formal administrative action is taken for the specific violation(s).
2. Conditions necessary for a demonstration of upset. A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The Permittee submitted notice of the upset as required under Permit Part III.G., Notice of Noncompliance Reporting; and
 - d. The Permittee complied with any remedial measures required under Permit Part IV.D., Duty to Mitigate.
3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

- I. Toxic Pollutants.** The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

V. GENERAL REQUIREMENTS

A. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director and ADEC as soon as the Permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 Fg/l);
 - b. Two hundred micrograms per liter (200 Fg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 Fg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. Five hundred micrograms per liter (500 Fg/l);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes. The Permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
 2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Permit Part VI.A.1.
 3. The alteration or addition will significantly change the location, nature or volume of discharge or the quantity of pollutants, subject to the effluent limitations, discharged.
- C. Anticipated Noncompliance.** The Permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- D. Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- E. Duty to Reapply.** If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. An application should be submitted at least 180 days before the expiration date of this permit.
- F. Duty to Provide Information.** The Permittee shall furnish to the Director and ADEC, within a reasonable time, any information which the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.
- G. Other Information.** When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit such facts or information.
- H. Signatory Requirements.** All applications, reports or information submitted to the Director and ADEC shall be signed and certified.
1. All permit applications shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer.

- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and
 - b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
3. Changes to authorization. If an authorization under paragraph V.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.H.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- I. **Availability of Reports.** Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

- J. Oil and Hazardous Substance Liability.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Act.
- K. Property Rights.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
- L. Severability.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- M. State Laws.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.
- N. Inspection and Entry.** The Permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
- O. Transfers.** This permit may be automatically transferred to a new permittee if:
1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

VI. DEFINITIONS

- A. "Active Stream Channel" means that part of the channel that is below the level of the water. Unvegetated gravel bars are considered part of the active stream channel.
- B. "Bypass" means the intentional diversion of waste streams around any portion of a treatment facility.
- C. "Mining Season" means the time between the start of mining in a calendar year and when mining has ceased for that same calendar year."
- D. "Receiving Water" means waters such as lakes, rivers, streams, creeks, or any other surface waters which receive wastewater discharges.
- E. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- F. "Silt and Clay" are soil particles having a diameter of less than 0.002 mm (2 microns).
- G. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.